MONTANA LEGISLATIVE HISTORY

Chapter 251 1995

Bill H 551 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	2/15	✓ C	Hearing Date(s)	3/10	✓ C
	2/16	✓ C		3/13	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ___ Yes ✓ No

Committee _____ Report _____

HB 550 INTRODUCED BY KASTEN, ET AL.

PROVIDE IMPROVED TAXPAYER SERVICE TO BUSINESSES BY STREAMLINING AND SIMPLIFYING WAGE-BASED REPORTING FOR WITHHOLDING TAX, UNEMPLOYMENT INSURANCE TAX, AND OLD FUND LIABILITY TAX

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO TAXATION		
2/15	FISCAL NOTE REQUESTED		
2/20	FISCAL NOTE PRINTED		
2/28	HEARING		
3/01	COMMITTEE REPORT—BILL PASSED		
3/02	2ND READING PASSED AS AMENDED	89	10
3/02	TAKEN FROM 3RD READING AND REREFERRED TO APPROPRIATIONS		
3/13	HEARING		
3/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/18	2ND READING PASSED	80	18
3/20	3RD READING PASSED	80	19
	TRANSMITTED TO SENATE		
3/21	FIRST READING		
3/21	REFERRED TO TAXATION		
3/29	HEARING		
3/30	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	REVISED FISCAL NOTE RECEIVED		
4/04	2ND READING CONCURRED	37	11
4/05	REVISED FISCAL NOTE PRINTED		
4/05	3RD READING CONCURRED	37	13
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	98	1
4/10	3RD READING AMENDMENTS CONCURRED	96	4
4/11	SIGNED BY SPEAKER		
4/12	SIGNED BY PRESIDENT		
4/17	TRANSMITTED TO GOVERNOR		
4/25	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 529		
	EFFECTIVE DATE: 04/25/95—SECTIONS 1, 5-13 & 15-18		
	EFFECTIVE DATE: 07/01/95—SECTION 14		
	EFFECTIVE DATE: 07/01/96—SECTIONS 2-4		

HB 551 INTRODUCED BY CLARK, ET AL.

REQUIRE CERTAIN SEXUAL AND VIOLENT OFFENDERS TO PROVIDE DNA SAMPLES

BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO JUDICIARY		
2/15	HEARING		
2/15	FISCAL NOTE REQUESTED		
2/17	COMMITTEE REPORT—BILL PASSED		
2/18	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
2/18	2ND READING PASSED	89	4
2/20	3RD READING PASSED	93	4
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/10	HEARING		

3/14	COMMITTEE REPORT—BILL CONCURRED		
3/18	2ND READING CONCURRED	25	21
3/20	3RD READING CONCURRED	37	13
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/22	SIGNED BY PRESIDENT		
3/23	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 251		
	EFFECTIVE DATE: 03/27/95		

HB 552 INTRODUCED BY QUILICI, ET AL.

CHANGE DEPOSIT OF FUNDS COLLECTED FOR THE STATE WARRANT SYSTEM FROM THE SPECIAL REVENUE FUND TO THE INTERNAL SERVICE FUND

BY REQUEST OF THE JOINT SUBCOMMITTEE ON GENERAL GOVERNMENT & TRANSPORTATION

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO APPROPRIATIONS		
2/15	FISCAL NOTE REQUESTED		
2/20	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
3/17	HEARING		
3/20	COMMITTEE REPORT—BILL PASSED		
3/22	2ND READING PASSED	99	0
3/23	3RD READING PASSED	96	0
	TRANSMITTED TO SENATE		
3/24	FIRST READING		
3/24	REFERRED TO FINANCE & CLAIMS		
3/30	HEARING		
4/01	COMMITTEE REPORT—BILL CONCURRED		
4/05	2ND READING CONCURRED	50	0
4/06	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
4/08	SIGNED BY SPEAKER		
4/10	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 473		
	EFFECTIVE DATE: 07/01/95		

HB 553 INTRODUCED BY GRADY, ET AL.

ELIMINATE STATE-SPONSORED CREDIT CARD

BY REQUEST OF THE JOINT SUBCOMMITTEE ON GENERAL GOVERNMENT & TRANSPORTATION

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO APPROPRIATIONS		
3/02	HEARING		
3/06	COMMITTEE REPORT—BILL PASSED		
3/07	2ND READING PASSED	97	1
3/08	3RD READING PASSED	97	2
	TRANSMITTED TO SENATE		
3/09	FIRST READING		
3/09	REFERRED TO FINANCE & CLAIMS		
3/14	HEARING		

Chapter Page

248 *(House Bill No. 424; Keenan)* AN ACT CLARIFYING THAT THE 24-MONTH REDEMPTION PERIOD FOR A PROPERTY TAX LIEN APPLIES ONLY TO PROPERTY ON WHICH THERE ARE DELINQUENT SPECIAL IMPROVEMENT DISTRICT ASSESSMENTS OR DELINQUENT RURAL SPECIAL IMPROVEMENT DISTRICT ASSESSMENTS; AND AMENDING SECTION 15-18-111, MCA. *724*

249 *(House Bill No. 436; Kottel)* AN ACT REVISING CERTIFICATION REQUIREMENTS FOR CHEMICAL DEPENDENCY COUNSELORS; PROVIDING FOR THE ESTABLISHMENT OF REQUIREMENTS BY RULE; AND AMENDING SECTION 53-24-215, MCA. *725*

250 *(House Bill No. 475; Forbes)* AN ACT ESTABLISHING AN INTEREST ON TRUST ACCOUNTS PROGRAM FOR NOMINAL OR SHORT-TERM DEPOSITS OF CUSTOMER FUNDS BY TITLE INSURERS OR TITLE INSURANCE PRODUCERS; PROVIDING THAT THE PROGRAM BE ADMINISTERED BY THE MONTANA LAND TITLE ASSOCIATION FOUNDATION; AND AMENDING SECTION 33-25-201, MCA. *726*

251 *(House Bill No. 551; Clark)* AN ACT REQUIRING CERTAIN SEXUAL AND VIOLENT OFFENDERS TO PROVIDE DNA SAMPLES; PROVIDING THAT DNA RECORDS ARE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; ESTABLISHING A DNA IDENTIFICATION INDEX WITHIN THE DEPARTMENT OF JUSTICE TO MAINTAIN DNA RECORDS; ESTABLISHING USES FOR DNA RECORDS; PROVIDING THAT DNA RECORDS ARE NOT SEALED UNDER THE MONTANA YOUTH COURT ACT; AMENDING SECTION 41-5-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *728*

252 *(House Bill No. 553; Grady)* AN ACT ELIMINATING THE STATE-SPONSORED CREDIT CARD; AMENDING SECTION 17-1-504, MCA; REPEALING SECTIONS 31-1-601, 31-1-602, AND 31-1-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *732*

253 *(Senate Bill No. 171; Franklin)* AN ACT REVISING PHYSICAL THERAPY LAWS; AUTHORIZING LICENSURE OF PHYSICAL THERAPIST ASSISTANTS AND ESTABLISHING STANDARDS FOR LICENSURE; CLARIFYING REQUIREMENTS FOR SUPERVISING PHYSICAL THERAPIST ASSISTANTS, AIDES, AND STUDENTS; ESTABLISHING CONTINUING EDUCATION REQUIREMENTS FOR PHYSICAL THERAPISTS AND ASSISTANTS BY RULE; AND AMENDING SECTIONS 37-11-101, 37-11-105, 37-11-201, 37-11-203, 37-11-301, 37-11-303, 37-11-304, 37-11-305, 37-11-306, 37-11-307, 37-11-308, 37-11-309, 37-11-320, AND 37-11-321, MCA. *732*

254 *(Senate Bill No. 255; Franklin)* AN ACT PROVIDING FOR THE WITHHOLDING OF TAX FROM WAGES RECEIVED BY MEMBERS OF THE NATIONAL GUARD AND RESERVES WHILE PARTICIPATING IN DRILLS AND TRAINING; AMENDING SECTIONS 15-30-201 AND 15-30-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *739*

255 *(House Bill No. 65; McKee)* AN ACT GENERALLY REVISING THE LAWS GOVERNING COMMITMENT TO RESIDENTIAL FACILITIES FOR PERSONS WHO ARE SERIOUSLY DEVELOPMENTALLY DISABLED; SETTING QUALIFICATIONS FOR A PERSON TO BE COMMITTED TO A RESIDENTIAL FACILITY; AMENDING SECTIONS 53-20-102, 53-20-104, 53-20-106, 53-20-107, 53-20-112, 53-20-113, 53-20-114, 53-20-116, 53-20-118, 53-20-121, 53-20-125, 53-20-126, 53-20-127, 53-20-128, 53-20-129, 53-20-130, 53-20-133, 53-20-146, AND 53-20-161, MCA; REPEALING SECTIONS 53-20-105 AND 53-20-111, MCA, AND SECTION 27, CHAPTER 381, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. *741*

House BILL NO. 551

INTRODUCED BY Clark

BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN SEXUAL AND VIOLENT OFFENDERS TO PROVIDE DNA SAMPLES; PROVIDING THAT DNA RECORDS ARE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; ESTABLISHING A DNA IDENTIFICATION INDEX WITHIN THE DEPARTMENT OF JUSTICE TO MAINTAIN DNA RECORDS; ESTABLISHING USES FOR DNA RECORDS; PROVIDING THAT DNA RECORDS ARE NOT SEALED UNDER THE MONTANA YOUTH COURT ACT; AMENDING SECTION 41-5-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance concerning rules adopted for the withdrawal of blood samples for DNA testing.

It is the intent of the legislature that rules adopted by the department of justice will ensure that blood collections under this bill will be conducted in a manner that will not compromise the health and welfare of the donor and testing personnel.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Department" means the department of justice provided for in 2-15-2001.

(2) "DNA" means deoxyribonucleic acid.

(3) "DNA identification index" means the DNA identification record system established under [section 2].

(4) "DNA record" means DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths,

autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

(5) "DNA testing" means DNA analysis of materials derived from the human body for the purposes of identification consistent with [sections 1 through 7].

(6) "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

(7) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA type, and has the specific meaning given to the word by department rule, which must take into account the meaning generally given to the word for forensic typing by DNA technologists.

(8) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

(9) "Violent offense" means an offense contained in 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103 or an equivalent offense under federal law or the law of another state.

NEW SECTION. **Section 2. Establishment of DNA identification index.** (1) The department shall establish a computerized DNA identification index for the receipt, storage, and exchange of DNA records. The DNA identification index is the central repository for DNA records in the state of Montana.

(2) The DNA identification index must include:

(a) DNA records for an individual convicted of a sexual or violent offense; and

(b) analyses of DNA samples recovered from crime scenes, medical examinations, and unidentified human remains. For purposes of identification of missing persons, the DNA identification index may include DNA records of close biological relatives of a missing person.

(3) The DNA identification index and the DNA testing done by a forensic DNA laboratory must be compatible with the systems of DNA identification used by other criminal justice agencies or private testing laboratories to the extent necessary to permit the exchange of DNA information.

(4) The DNA records collected and stored in the DNA identification index may contain only information relating to the identification of individuals. Information that identifies a person that is the subject of a record must be limited to the information that is necessary to pursue criminal investigations and to support statistical interpretation of results.

(5) The DNA identification index may be used:

(a) by law enforcement agencies for purposes of identification in the course of criminal

investigations and proceedings;

(b) to assist in the identification of human remains, including identification of missing persons; and

(c) if information allowing a person to be identified is removed, for a population statistics data base and for identification, research, and protocol development for forensic DNA analysis and quality control.

NEW SECTION. **Section 3. Collection of samples and maintenance of data.** (1) Following entry of judgment, a person convicted of a sexual or violent offense or a youth found under 41-5-521 to have committed a sexual or violent offense shall provide to a person or entity designated by the county attorney a sample of blood for DNA analysis to determine identification characteristics specific to the person.

(2) The blood sample must be collected, stored, and sent by the person or entity designated by the county attorney under subsection (1) to the department for entry in the DNA identification index in accordance with rules adopted by the department with the advice of the department of health and environmental sciences.

(3) The forensic DNA laboratory may perform DNA analysis only for those markers that have value for law enforcement identification purposes.

NEW SECTION. **Section 4. Release of DNA records.** (1) The DNA records contained in the DNA identification index may be released only for the following purposes:

(a) to federal, state, and local law enforcement agencies for law enforcement identification purposes;

(b) for criminal defense purposes, to a defendant for whom there is a DNA record, who is also entitled to samples and analyses held as part of the record;

(c) to assist in the identification of human remains, including missing persons; and

(d) if information allowing a person to be identified is removed, for a population statistics data base and for identification, research, and protocol development for forensic DNA analysis and quality control.

(2) Requests for DNA records must be in writing, signed by the requesting party, and maintained on file in the DNA identification index in accordance with rules adopted by the department.

(3) A defendant in a criminal proceeding is entitled to information in the DNA identification index relating to the number of requests previously made for comparison searches relating to the defendant and the names of the requesting parties.

NEW SECTION. **Section 5. Expungement of DNA records.** If a conviction of a sexual or violent offense is reversed, the record relating to the offense must be expunged from the DNA identification index. The county attorney of the county in which the conviction occurred shall notify the department of a reversal of a conviction for a sexual or violent offense.

NEW SECTION. **Section 6. Confidentiality of records of DNA testing.** Except as provided in [sections 1 through 7] or unless the person that they relate to consents to their release, records, findings, and results of DNA testing are confidential criminal justice information subject to the dissemination provisions of Title 44, chapter 5.

NEW SECTION. **Section 7. Rulemaking authority.** The department shall adopt rules for the handling, collection, transportation, sampling, and storage of blood samples and to further define the term "marker". The rules concerning the handling of blood samples must ensure protection of the health of persons who may come into contact with the samples.

Section 8. Section 41-5-604, MCA, is amended to read:

"**41-5-604. Disposition of records.** (1) All youth court records and law enforcement records, except fingerprints, DNA records, and photographs pertaining to a youth ~~coming under~~ covered by this chapter, ~~shall~~ must be physically sealed when the youth reaches ~~the age of~~ 18 years of age.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the ~~above~~ records and files ~~shall~~ listed in subsection (1) must be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the records ~~so sealed~~ shall also seal or destroy ~~such~~ the copies of records. Anyone violating the provisions of this subsection ~~shall be~~ is subject to contempt of court.

(4) Nothing ~~herein~~ contained in this section ~~shall prohibit~~ prohibits the destruction of ~~such~~ records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section ~~shall~~ do not apply to youth traffic records or to records directly related to an offense to which access must be allowed under 41-5-601."

NEW SECTION. **Section 9. Report to legislature.** The department of justice shall report to the 56th legislature on the success of the program created by [sections 1 through 7], including the number of samples analyzed and the number of cases successfully prosecuted using the DNA identification index created by [sections 1 through 7].

NEW SECTION. **Section 10. Coordination instruction.** If the 54th legislature does not appropriate money to fund administration of [this act] by a line item or other appropriation specifically referring to the program contained in [this act], then [this act] is void.

NEW SECTION. **Section 11. Effective date.** [This act] is effective on passage and approval.

-END-

HOUSE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0551	CLARK, ROBERT 2/14	2/15	DNA TESTING OF SEX OFFENDERS AND VIOLENT OFFENDERS; RECORDS TO BE KEPT	DO PASS 2/16 VOTE: 17-1		2/17
HB0566	JORE, RICK 2/16	2/17	REVISE PRINCIPLES OF RIGHTS OF CONVICTION	TABLED ON 02/17 VOTE: 17-0		
HB0597	WELLS, JACK 3/15	3/21	PRIVATE PROPERTY PROTECTION ACT	TABLED ON 03/21 VOTE: 13-6		
HJ0014	GREEN, DICK 1/20	2/01	RESOLUTION; PREVENT LAW STUDENTS FROM SUING GOVERNMENT FOR PRISONERS	DO PASS 2/6 VOTE: 9-7		2/08
HJ0018	BRAINARD, MATT 2/04		ENCOURAGE GUN OWNERSHIP TO PROTECT STATE AND ITS PEOPLE	VOTE:	STATE ADMIN.	
SB0001	GAGE, DELWYN 1/12	1/20	CODE COMMISSIONER BILL	CONCUR 1/20 VOTE: 17-0		1/23
SB0006	CRIPPEN, BRUCE	1/09	RETAIN 7-MEMBER SUPREME COURT	VOTE:		
SB0006	CRIPPEN, BRUCE 1/14	1/19	RETAIN 7-MEMBER SUPREME COURT	CONCUR 1/19 VOTE: 19-0		1/20
SB0007	KLAMPE, TERRY 1/10	1/17	CLARIFY MEDICAL CLAIMS STATUTES OF LIMITATIONS	CONCUR 1/17 VOTE: 19-0		1/18
SB0010	GAGE, DELWYN 1/12	1/20	GIVE STATE A RIGHT TO JURY TRIAL IN ALL CRIMINAL CASES	CONCUR 1/20 VOTE: 17-0		1/23
SB0013	HALLIGAN, MIKE 2/15	3/01	REVISE MANNER TO GIVE NOTICE TO DRIVER WHEN LICENSE OR PRIVILEGES SUSPENDED	CONCUR AS AMENDED 3/22 VOTE: 17-0		3/23
SB0026	FRANKLIN, EVE		ALLOW LARGER DETENTION FACILITY GRANTS IN CASES OF EXTREME HARDSHIP			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 15, 1995, at 8:05 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 551, HB 543
Executive Action:	HB 357 DO PASS
	HB 482 DO PASS
	HB 547 DO PASS
	HB 160 DO PASS AS AMENDED
	HB 356 DO PASS AS AMENDED

{Tape: 1; Side: A}

HEARING ON HB 551

Opening Statement by Sponsor:

REP. DEB KOTTEL, HD 45, made opening remarks on the committee bill, HB 551, which would require collection and retention of DNA samples from those persons who have been convicted of certain violent crimes and certain sexual crimes.

Proponents' Testimony:

Dave Ohler, Legal Counsel, Department of Corrections and Human Services (DCHS), said the department supported this bill particularly as it related to sex offenders. The department was reported as neutral as it related to violent offenders.

John Connor, Department of Justice and Montana County Attorneys' Association, Member of Governor's Advisory Council on Corrections, supported HB 551.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. LIZ SMITH asked if it would also provide the channel for the expansion of the DNA laboratory.

REP. KOTTEL said her understanding was that there is no current on-site DNA facility. Testimony on HB 191 and the fiscal note reflected the renting of facilities to set up the equipment for the lab and hiring a DNA technician.

REP. SMITH asked if this then was granting permission for that.

REP. KOTTEL said the bill did not grant renting of that particular space, but would provide for setting up a DNA bank. The department would have to implement the legislative intent and that plan was in HB 191.

REP. DUANE GRIMES asked for explanation of the concerns of DCHS in expanding this to include violent offenders.

Mr. Ohler said the concerns primarily were centered on whether or not it has been considered that DNA evidence for violent crimes serves a useful criminal investigative purpose while sex offenses usually include physical evidence and make the use of DNA testing more practical.

REP. GRIMES said he could see its usefulness if there was physical evidence left at the scene of some violent crimes, but

wondered if there was the need to list those where DNA samples would be useful. He also asked him to speak for the department on their position regarding this bill.

Mr. Ohler said he knew DNA evidence had been used in violent offenses such as homicide. The department's concern is whether each of the offenses listed had been considered by people who deal with criminal evidence and whether or not it would be useful. The department would support this bill.

REP. DANIEL MC GEE asked why the bill provided for reporting to the 56th Legislature rather than the 55th.

REP. KOTTEL recalled that it would take a year to establish the facility and that there would not be enough evidence between then and the next legislative session to make an assessment.

REP. MC GEE asked if the only significant difference between HB 551 and HB 191 was the inclusion of violent crimes.

REP. WILLIAM BOHARSKI asked **Mr. Connor** how useful he thought the use of DNA samples in prosecution in the future might be.

Mr. Connor said in his view it would be very useful. He recalled testimony of and involvement in the investigation of a violent crime which had used DNA evidence which proved to be the most significant evidence they had in the prosecution of that case. He stated it had also been helpful in other cases of violent crimes.
REP. BOHARSKI asked what sort of assistance it would be from an investigative standpoint.

Mr. Connor thought it has usefulness in terms of narrowing the focus of the investigation on particular subjects. It would also have value in eliminating potentially innocent people from the pool of suspects.

REP. BOHARSKI asked him to provide the committee with a list of specific cases where something like this would have been useful as well as a rough number of sex crimes on a yearly basis for the purpose of sharing more concrete figures with the larger body of the legislature as well as the Appropriations Committee.

REP. SMITH said the committee already had that information distributed to them on a previous bill.

{Tape: 1; Side: A; Approx. Counter: 22.3; Comments: The secretary was not provided with a copy of the information referred to at this point.}

REP. BRAD MOLNAR said he was concerned with some of the crimes listed in the bill which were not violent. He felt the wording was overly broad and with those crimes included thought the statute would be struck down. He asked if that was correct.

Mr. Connor did not think it would be overly broad because it is a stated legislative policy to cover those acts and some of them include not only the threat, but also the carrying out of the act. Those cases being prosecuted under the subsection dealing with threat would not have application unless the offender left some physical evidence from being injured in an escape from the scene.

REP. MOLNAR asked if the bill provided for the taking of the DNA sample upon conviction so it would involve more than evidence left at the scene. Then this would allow the taking of the sample even from defendants who had threatened to commit a crime that was not truly violent or who had committed some acts of arson.

Mr. Connor said it would not be cost effective, but it would be possible.

REP. MOLNAR said he was not worried about cost effectiveness, but about the bill being struck down because it was overly broad.

Mr. Connor said there would be a way of stating it in the bill that only blood samples would be taken in which actual physical violence or harm was done so that it would not be applicable to some other crimes.

REP. BOHARSKI asked if it would be prudent to have the department work with either the justice department or the board of crime control to determine those crimes where it would be appropriate.

Mr. Connor said they would be glad to do that and he would proceed along those lines.

REP. AUBYN CURTISS asked how much the samples would cost to send them out of state for analysis and how many are being sent out annually.

REP. LOREN SOFT had the information she requested and planned to hold it for executive action.

Closing by Sponsor:

REP. KOTTEL closed with clarification of the list of crimes which she felt eliminated those crimes which **REP. MOLNAR** was concerned with and defended the list as being appropriate. She had investigated the rates of recidivism and found evidence that lesser felonies are often escalated into more violent felonies as the offenders continue to offend.

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 2-15-95

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Don McLeo.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*
HB 47	✓	
551	✓	
all		
HB 482 - Passed	✓	
HB 356 - Passed	✓	
HB 357 - Passed	✓	
HB 160		

SENATE BILL/AMENDMENT	*AYE*	*NO*

Rep. Brad Molen
(Signature)

HR:1993
WP/PROXY

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 16, 1995, at 7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: HB 551 DO PASS; HB 366 & HB 450 TABLE
HB 186 DO PASS AS AMENDED
HB 240 DO PASS AS AMENDED
HB 256 DO PASS AS AMENDED
HB 380 DO PASS AS AMENDED
HB 429 DO PASS AS AMENDED
HB 443 DO PASS AS AMENDED
HB 540 DO PASS AS AMENDED
HB 543 DO PASS AS AMENDED

Mr. MacMaster said it would not hurt to insert industrial or commercial operation or activity on page 1, line 24; then on page 2, line 1 they should also include industrial or commercial operation or activity.

REP. MC GEE believed all things were covered in the proposed language.

REP. TREXLER said he was referring to existing language which includes definitions about what an industrial operation is. He said he thought it needed to be narrowed.

REP. BOHARSKI asserted that the language on the top of page two applied to this section. He said it really did not matter where else in code the definition appeared because this particular definition applied to this particular section. He would be concerned about the scope of the bill in picking up a definition from somewhere else in statute without specifically defining it.

REP. TASH withdrew his amendment.

REP. JOAN HURDLE submitted that there are times when it might be necessary to interfere with business. She hesitated to support the bill because it placed restrictions on the people's right to intervene.

REP. AUBYN CURTISS strongly supported the bill. Many appeals and actions can currently be activated with just a simple postage stamp. She thought it was time that people became responsible for their actions and that frivolous actions can put many people out of work and cost large sums of money which gets passed on to consumers.

Vote: **The motion (DO PASS AS AMENDED) carried 11 - 7, REPS. WYATT, CAREY, KOTTEL, SHEA, HURDLE, MC CULLOCH and TREXLER voted no. (REPS. SMITH voted aye and REP. SHEA voted no by proxy and REP. ANDERSON was absent.)**

{Tape: 1; Side: A; Approx. Counter: 25.7; Comments: REP. SHEA'S proxy votes were reported and recorded, but not submitted to the secretary.}

EXECUTIVE ACTION ON HB 551

Motion: **REP. KOTTEL MOVED HB 551 DO PASS.**

Discussion: **CHAIRMAN CLARK** said that since it was a committee bill, he would get an additional sponsor sheet for the committee members to sign. **REP. BOHARSKI** agreed to carry the bill.

REP. KOTTEL said they had the information from the Attorney General's office and she presented and explained it to the committee. **EXHIBIT 2**

REP. MC GEE drew the committee's attention to the third paragraph of the letter.

REP. ELLEN BERGMAN asked if there was a cost estimate for preparing the lab for operation.

REP. KOTTEL said that could be found on the fiscal note for HB 191.

REP. BERGMAN asked if this bill would go to appropriations and she was told it would.

REP. MC GEE said that during the appropriations part of the process they might want to explore the option of continuing to get the tests done out of state.

REP. BILL CAREY wanted the committee to look into the information and suggestions from paragraph 2 on page 2 of the letter.

REP. KOTTEL discussed that suggestion. She wanted to get the bill out of committee and then adjust it through amendments later in the process.

REP. MOLNAR discussed his concerns regarding expunging the DNA records and the inclusion of crimes involving intimidation which he also wanted to have considered during the process of amending the bill.

REP. KOTTEL responded to those concerns.

Mr. MacMaster reminded the committee that under constitutional principles they cannot be tried for the same crime twice and that the bill was providing for a reversal and in that situation, there would be no need for the DNA evidence. If the court did not reverse the conviction, but ordered a new trial, then the DNA evidence could be used to try the defendant again. He said that on page 4, line 2, they could say, "If a conviction of a sexual or violent offense is reversed, but not if a new trial is ordered, the record must be expunged."

REP. BOHARSKI said that his concern was that it was not samples collected from the crime scene under section 5, but those collected from the suspect under section 3 which should be expunged. Evidence from a crime scene would be disposed of when they decide there is nothing left to do with the case.

REP. MC GEE reminded the committee that DNA could also prove innocence.

Vote: The DO PASS motion carried 17 - 1, REP. WYATT voted no. REP. SHEA and REP. SMITH voted aye by proxy. REP. ANDERSON was absent.

HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 551** (first reading copy -- white) **do pass.**

Signed: Bob Clark

Bob Clark, Chair

Committee Vote:
Yes 17, No 1.

401405SC.Hbk

EXHIBIT 2
DATE 2/16/95
HB 551

ATTORNEY GENERAL
STATE OF MONTANA

Joseph P. Mazurek
Attorney General

Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

MEMORANDUM

TO: Chairman Clark and Members of the House Judiciary Committee

FROM: John Connor, Assistant Attorney General

DATE: February 15, 1995

SUBJECT: House Bill 551

Pursuant to Representative Boharski's request, I have obtained the following information on DNA processing from the State Crime Lab and the Board of Crime Control relative to House Bill 551.

In 1993, the most recent year for which statistics are available, there were 179 rapes reported or known, 25 of which were cleared by arrest; 1183 other sex-related crimes reported or known, 265 of which were cleared by arrest; 18 homicides reported or known, 13 of which were cleared by arrest; 788 aggravated assaults reported or known, 412 of which were cleared by arrest; 186 robberies known or reported, 53 of which were cleared by arrest; 179 arsons reported or known, 25 of which were cleared by arrest.

The Board does not have statistics on the number of arrests that actually resulted in conviction, or the number of cases that were pled down to a lesser or different charge. There were no statistics for intimidation, kidnapping or aggravated kidnapping.

According to Jim Streeter, a forensic serologist at the lab, it costs $100.00 per sample to have samples analyzed by outside lab facilities. It would cost about $50.00 per sample if they were done in the lab once the scientists were trained and the system on line. Mr. Streeter indicated that in his view, the sex crimes and homicide would probably be of the highest DNA priority, with aggravated assault, robbery, kidnapping and arson in descending order of priority.

He pointed out that DNA may be useful in cases involving threats, such as intimidation or threats against public officials because DNA can be recovered from saliva on postage stamps and envelopes. He thought it would have very limited use for arson because the blood and tissue samples in a fire are normally beyond an analytical capability.

He indicated that if the analysis were expanded to include the additional violent offenses, it probably would not require more FTEs than reflected in House Bill 191, although they would be quite busy. However, once the data base and equipment were in place, the additional analysis would not be that difficult.

In response to Representative Molnar's concern, Mr. Streeter and I concurred that it might be a good idea to make testing mandatory in those cases in which physical violence actually occurred and discretionary with the court in other cases. This would then cover the situations where a person was charged under a statute in which actual violence occurred but where, for whatever reason, the defendant is allowed to plead to a lesser charge that does not carry a violent implication or proof requirement. In this same regard, it might be a good idea to put a severability clause in the bill.

Mr. Streeter pointed out that it would take about two years to get the serologists trained and capable of doing the testing, so if the bills involving DNA do not pass because of fiscal impact, there may be some worth in at least retaining a training capability, should it be a desired approach later. Thus, if the scientists were trained, at least if such legislation were to be adopted at some later point, it would not take two years thereafter to get the process implemented.

I hope this information is of some assistance to the committee.

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **ACTING CHAIRMAN MIKE HALLIGAN**, on March 10, 1995, at 9:00 a.m.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 74, HB 355, HB 551
Executive Action: HB 157, HB 355

HEARING ON HB 355

Opening Statement by Sponsor:

REPRESENTATIVE BILL REHBEIN, House District 100, Sidney, presented HB 355. This bill deals with stolen property. If someone has stolen property and it is still in his possession, then law enforcement can go after him. Current law tended to say that a person could steal property, hide it for five years and then be free from prosecution. They do not believe that is the way the law was intended.

the individual's right of privacy. A judge would be a good person to determine that factor. He suggested the word "must" be replaced with "may" thereby leaving it up to the judge's discretion.

SENATOR BARTLETT stated that would improve the amendment.

HEARING ON HB 551

Opening Statement by Sponsor:

REPRESENTATIVE WILLIAM BOHARSKI, House District 79, Kalispell, presented HB 551. The House Judiciary Committee had a bill before them regarding DNA records testing for sexual offenses. The fiscal note stated that the cost of the original bill was almost identical to the cost of this bill. The Committee decided that because there were so few sexual offender cases and it would involve such a large amount of capital and initial costs into this DNA testing facility, that this might as well be expanded to include other violent crimes. As with most bills, he was somewhat concerned about the rulemaking authority but the members of the House and the Judiciary Committee felt comfortable that records would be necessary. On page 2, they added most of the language on lines 11 and 12 to add the violent crimes. As the bill originally came in, it dealt only with sex crimes. A question which came up was, who would have access and who would want to use these records. Initially, the language on page 3, section 4, stated the information on DNA records can be released for purposes other than someone who is being charged with a sex crime. They would be collecting records of people who were convicted of sex crimes only. However, it would be legitimate to access that information for all other crimes. The most contentious issue with this bill was with the expungement of DNA records. They changed the wording because there was a lot of concern about being convicted in a lower court of a crime and if that conviction was overturned, would it be reasonable for someone to keep your DNA records on file? They decided if the offense is reversed, the record would be expunged. According to the attorney general's office, it would take about two legislative terms before they would know how well this system is working. The report to the legislature is scheduled for the 56th Legislature rather than the 55th Legislature. In the House they discussed having the State of Montana enter into an arrangement with another state to save some of the setup costs for this.

Proponents' Testimony:

Bill Unger, Department of Justice, spoke in support of this bill. He is also the Director of the State Crime Lab in Missoula. In 1993 the Montana Board of Crime Control identified 179 rapes in Montana. Of the 179 reported to law enforcement, the Montana State Crime Lab received 67. The primary reason the rest of the cases were not submitted to the crime lab is a recommendation by the crime lab that they not be submitted. If there is no known

suspect, they recommend law enforcement retain any evidence they have until a suspect is found. Only then can they help law enforcement determine if that person can be eliminated as a suspect. This bill would allow them to establish a database and compare sex offenders with that database. Sex offenders have a high propensity to reoffend. In 1994, they received 112 rape cases. They anticipate there were probably over 200 cases which were not submitted to the crime lab. Currently 43 states have DNA capabilities. There have been three DNA cases in the state which have been upheld by the Supreme Court. It would take approximately a year and a half to establish a DNA lab. The standards they would follow are very strict and have been adopted by the American Society of Crime Lab Directors.

Dave Ohler, Department of Corrections and Human Services, stated their support of HB 551. This committee heard HB 157 which dealt with lifetime registration and sentencing of sex offenders. The Department believes that HB 551 is another peg in the sex offender legislation. Testimony during HB 157 concerned sex offenders who are amenable to treatment and who are placed in the community need to have some guidelines and boundaries. The DNA record is another boundary. The sex offender realizes that his DNA is on record with the forensic lab and, hopefully, that will give him more pause before committing another sexual offense.

Marty Lambert, Montana County Attorneys Association, spoke on behalf of the Gallatin County Attorney who was the Chairman of the Subcommittee on Sexual Offenders of the Governor's Advisory Committee on Corrections. This will clear people who are suspected of crimes, but are innocent. Sex offenders will be known when they come to town and they will be suspected where there is no readily identifiable person to suspect. This type of database could clear innocent people as well as leading to the proper prosecution and conviction of those who might be guilty of sexual offenses. If he has a case which is a serious case, he will use another crime lab when necessary. Sometimes these labs are very expensive. The money could be better spent having the crime lab in Montana.

John Strandell, Undersheriff of Cascade County, stated he served as a member of the Governor's Advisory Council on Corrections and Criminal Justice and also served on the Subcommittee for Sex Offenders. He also represents the **Montana Sheriffs and Peace Officers Association** who also endorse this bill. HB 551 is an excellent bill which would be a tremendous tool and asset for law enforcement within the state in the investigation of violent crime. DNA offers the potential to make positive identification of perpetrator's blood, semen, hair, or tissue samples found at crime scenes. Many sex offenses are repeat offenses. This legislation would provide a deterrent to convicted sex offenders knowing that there is a DNA record on file and their chances of being caught are increased. It would also effectively combat transient and mobile sex offenders who move freely within our state committing crimes from town to town. Many states currently

have laws which allows for DNA sampling of convicted sex and violent offenders. DNA samples would be analyzed and stored in the lab at the Forensic Science Division in Missoula and only criminal justice agencies would have access to the confidential information. The fiscal note would be money well spent in order to combat the rising cases of sex and violent offenses in our state committed against both adults and children.

Opponents' Testimony:

Scott Crichton, ACLU, presented his written testimony, **EXHIBIT 4.** We are not talking about being able to use DNA testing in the court. We are talking about giving the state the authority to develop a data bank on its citizens who have been convicted of sex or violent crimes. This bill states that the state now has reasonable cause to suspect in any future prosecutions because of past convictions.

Informational Testimony: None

Questions From Committee Members and Responses:

SENATOR HALLIGAN asked if the lab in Wyoming would perform the same analysis as the lab in Colorado in a DNA test of saliva, as opposed to blood or other body fluids. Are there standards in the profession now that make sure that they are analyzing the same bands of genetic material?

Julie Long, Montana Crime Lab, commented the standards are very stringent guidelines. They have the same concerns as **Mr. Crichton** detailed. She, as a scientist, will not embark on a new procedure without proper validation, education, or experience. It is to their advantage to use the same methodology which Idaho, Wyoming, and Oregon labs use. The scientific community is standardizing so that results can be compared.

SENATOR HALLIGAN asked if there is 100% statistical probability that the DNA test will show that the same person was involved in cases in Wyoming, Montana, and Idaho? Is it that accurate?

Ms. Long stated the statistical argument is large at this point. Each person's DNA is different from the person next to them with the exception of identical twins. The DNA analysis which they do forensically, does not analyze the entire DNA molecule. No one has coded the entire DNA molecule. It is like a string of three billion beads in row. In forensic analysis, you are only looking at 150 to 200 of those beads. Those particular sections of the DNA does not code for anything like eye or hair color, personality. They are non-coding regions which do not identify personality or physical traits about that particular person which is why they are chosen for forensic analysis. Since the entire DNA molecule is not analyzed, there would not be a 100% inclusion. Depending on how common your particular DNA pattern in that small portion is in your population, is what is compared.

Part of the year and a half set up time is to establish a population database.

SENATOR HALLIGAN stated that if they are trying to set up Montana's statistical database, they would have to get fluid samples from ordinary citizens who have not been part of the criminal justice system.

Ms. Long stated that is how a population database is set up. They would ask for volunteers. It takes a minimum of 100 individuals to set up a good database population.

SENATOR HOLDEN asked if the people of Montana could rely on the lab's DNA testing capabilities now.

Ms. Long stated they do not have the capability or education at the present time. Any cases relative to DNA testing must be sent to a private lab.

SENATOR HOLDEN asked for further information on the fiscal note.

Mr. Unger stated a large part of the funds involved in the fiscal note would be remodeling at the State Crime Lab in Missoula. Currently the crime lab rents approximately 9,100 square feet from St. Patrick's Hospital. There is currently 5,000 square feet available. That space is available for expansion. It is an all or none situation because of the security required. The lab is completely filled at this time. If a DNA program is implemented, it would take two contamination free rooms. They are paying $5.85 a square foot including utilities, which is a giveaway. The average cost in Missoula is anywhere from $8.50 to $15.50 a square foot. Renting the additional 5,000 square foot would handle the growth they are projecting for the next 15 to 20 years. In consideration of sharing DNA testing with another state, the amount of work they would have would require those states to hire two scientists, which is what is requested in the fiscal note. The materials would cost the same. The only savings would be about $50,000.

SENATOR HOLDEN asked **REPRESENTATIVE BOHARSKI** if the House had any concerns about the fiscal note.

REPRESENTATIVE BOHARSKI stated that they were concerned about spending approximately $400,000 setting up the DNA testing program since there were so few sex crimes alone. Using this for violent crime would make it more appropriate. One of the last sections in the bill states that if money is not specifically line itemed by HB 2, this program would not come into operation.

SENATOR BARTLETT asked **REPRESENTATIVE BOHARSKI** the status of their budget request.

REPRESENTATIVE BOHARSKI stated he did not have that information.

SENATOR BARTLETT, referring to the all or nothing proposal for additional space at St. Patrick's, asked if the crime lab would use the remaining space not needed by the DNA program?

Mr. Unger answered they are expecting growth in Montana which would indicate growth in the crime lab. Currently, in the drug chemistry area their turnaround time has changed from two weeks to six weeks. There has been a huge increase in drug cases in the last five years. They are completely flooded with latent fingerprint examinations. They would only be using the 1500 square feet at this time because they would need funds for remodeling the remaining 3500.

Closing by Sponsor:

REPRESENTATIVE BOHARSKI stated that **Mr. Crichton** brought up some points which would concern us. In order to collect this information, the person must be convicted of any of the sexual or violent crimes listed in the bill. Some of the concern is whether or not this information will be allowed in court. This information will be used more frequently as time goes on. One of the advantages of DNA testing is that not only can it help in prosecution, it can also help in clear exoneration of an individual.

SENATOR BRUCE CRIPPEN took over as chairman of the hearing.

EXECUTIVE ACTION ON HB 157

Motion: **SENATOR HALLIGAN MOVED TO AMEND HB 157.**

Discussion: **SENATOR HALLIGAN** commented the technical amendment is not a problem.

SENATOR HOLDEN questioned if the word "sexual" was stricken in the amendment, where would the bill reference "sexual offender"?

Ms. Lane commented that at the bottom of page 6 the bill is amending § 46-23-506. HB 214 also amends the same section and also contains (2) which is identical to (2) on page 7 of HB 157. Both bills refer to "any time after 10 years since the date of the sexual offender's last conviction of a sexual offense" and "the offenders last conviction of a sexual or violent offense".

SENATOR LORENTS GROSFIELD posed the question if HB 214 failed and this bill passed with the amendment, would there still be a problem?

Ms. Lane stated if this was the only bill to pass, the subsection would read "At any time after 10 years since the date of the sexual offender's last conviction of a sexual offense, the offender may petition . . . the offender has the duty to register . . . the offender was convicted." There would be no problem.

ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION
P. O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3/10/95
BILL NO. HB 551

March 10, 1995

Mr. Chairman, members of the Committee:

For the record, my name is Scott Crichton, Executive Director of the American Civil Liberties Union of Montana, and I rise in opposition to HB 551.

The use of DNA testing has been in the news of late. The Larry Moore prosecution in Gallatin county was the first time DNA evidence was admitted in a criminal case in Montana. The Sex Offender Sub-Committee of the Governor's Advisory Council on Corrections and Criminal Justice Policy made news in late July of 1994 when they began discussing the concept of establishing a DNA bank for sex offenders.

The O.J. Simpson trial has also brought the use of this technology into the fore as the merits and risks associated with evidentiary hearings are being debated by the best criminal defense money can buy. And there have been a handful of cases nationwide where DNA matching has exonerated individuals who have been incarcerated and falsely convicted.

Originally, when this was HB 191, it was restricted to DNA testing and resulting data bank one one class of criminals, sex offenders. This bill expands the category to include violent offenders. Nobody is standing up for this unsavory minority. And only ACLU is standing up for the rights of these individuals.

I remind you that prisoners, whether convicted or waiting for trial, remain protected by the Constitution and while incarcerated should suffer restrictions of those constitutional rights which are necessary concommitants of incarceration.

Among those rights are 1) the right to counsel and other legal assistance; 2)the right to be free from unnecessary censorship of written material; 3) the right to express and practice political, personal and religious beliefs; 4) the right of personal property; 5) the right to vote; 6) the right to procedural due process; 7) the right to be free from unreasonable searches and seizures.

These are an easy first target, and no amount of testimony from me or others is likely to convince a legislative majority not to take this first precident setting step in crime control. So instead, I ask you to be fully cognizant of what are the implications of this first venture into a brave new world. When you pass this bill out of committee, you will be giving your blessing to an unprescidented measure. You are empowering the government, in this instance the State of Montana, to begin extracting genetic blue prints of a

small (and necessarily unsavory) portion of the population. You are for the first time empowering the state to keep a genetic data bank on these citizens. For now, at least, we are assured that the information will be maintained for the sole use of crime control.

With all the distrust that some seem to have of the federal government, it seems odd that everyone seems so trusting about the limits and intentions of state government. If government and law enforcement are always good willed, professional and self controlled, "we have nothing to fear but fear itself". But were that always the case with government, our founders would not have bothered spelling out a Bill of Rights with specific enumerated boundaries.

This bill is unstopable, I know. So I raise these few points in hopes that you will see fit to amend it to insure some protections against unprofessionalism or the potentialities of abuse.

I spell out in more detail the ACLU's position regarding Standards for Admissibility of DNA tests in written testimony. Currently, in order for DNA evidence to be admissible in a criminal prosecution, the extraction of DNA from a non-consenting individual must comport with Fourth Amendment Standards. To justify the involuntary extraction of DNA in the furtherance of a criminal investigation, a search warrant must be issued based upon reasonable cause.

A defendant must be given an adequate oppoprtunity to litigate the reliability or validity of the DNA testing process used in her or his case. In the case of O.J. Simpson, there is no doubt he has adequate counsel and appropriate defense experts. I think an average or indigent defendant, might have real barriers to having a level playing field in accessing this forensic evidence and/or engaing in independent testing.

But for now I'd like to focus on the need for Procedural Safeguards. One prominent scientist has argued that there is more quality assurance required to diagnose strep throat than to put a person on death row. At a minimum, 1) all laboratories doing forensic DNA analysis should be required to be liscenced; 2) laboratory personnel should be accredited; and 3) rigorous proficiency testing guidelines should be followed, including separate, independent analyses of each test result and blind external proficiency testing of laboratories on a quarterly basis, with strict standards for disqualifications of laboratories producing mistaken results.

Finally, the DNA contains a substantial amount of personal information not necessarily pertinent to the government's law enforcement goals and which information should not be maintained by the government. Government respect for individual privacy and autonomy is being diminished to a point inconsistent with the aim of a free and open society. For these reasons, the ACLU opposes the creation of data banks for the purposes of identifying and investigating individuals as suspects in future criminal cases.

EXHIBIT 4
DATE 3-10-95
HB 551

There use of forensic evidence in criminal cases raises serious civil liberties concerns, many of which are intensified by the prosecution's use of DNA analysis and identification. The concepts of fundamental fairness embedded in the Due Process Clauses of the federal and state constitutions obligate prosecutors to build their cases with valid and reliable evidence. DNA identification testimony may present significant due process problems if: 1) it is presented to juries with the infallible aura of science; 2) laboratories that conduct forensic testing, including DNAS testing, are not regulated and test results are not reliable or valid; 3)given the difficulty of litigating the complexities of this issue and that the defendanty is likely to have fewer resources than the government, it is difficult for lay finders of fact to understand the scientific processes leading to the conclusory testimony presented to them; or 4) its claims are so ambitious that the tetsimony often threatens to subvert the standrad of proof beyond a reasonable doubt required by due process in a criminal trial.

Accordingly, before DNA identification testimony is admitted, the prosecution must prove 1) that the general p[rinciples underlying the forensic uase of the tets are accepted as accurate by a consensus of the scientific community; 2) that the actual procedures used in the individual case comported with those general principles, and in particular that the laboratories involved in the testing were sufficiently regulated to ensure the reliablity and validity of test results; and 3) that the probability derived from the DNA evidence used to identify the defendant was calculated through the use of appropriate statistical principles of population genetics and adequately developed data bases. Until this showing can be made, DNA testimony should not be admitted in criminal cases.

DATE 3/10/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 74 HB 355
HB 551

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Marty Lambert	Mt. City Attys Asso	355	X	
Marty Lambert	Gallatin County	551	X	
Jim Molloy	MTLA / SELF	74		X
Bill Unger	Dept. of Justice	551	X	
JIM STREETER	DEPT OF JUSTICE	551	X	
Julie Lang	Dept of Justice	551	X	
John Stranahan	Cascade County	551	X	
Scott Crichton	ACLU	551		X
Gary Ryder	Mt City Mgr			
Beverly Gibson	MACo	74	X	
Jerry Driver	Lincoln Co	74	X	
Dan Kemmis	HD45	71		
Jacqueline Lenmark	Am. Ins. Ass'n	H 74	as amd X	
Todd Shahahan	Farmers Ins. Group	H 74	as amd X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Anne Kalafat				
Katherine Lippel				
Mary E. Chord				

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 13, 1995, at 8:00 A.M.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: Sen. Al Bishop

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 150, HB 240, HB 380, HB 429
Executive Action:	HB 380, HB 150, HB 551, HB 311, HB 74, HB 501. Discussed: HB 214, HB 429

{Tape: 1; Side: A; Approx. Counter: 00}

HEARING ON HB 150

Opening Statement by Sponsor:

REPRESENTATIVE CHRIS AHNER, House District 51, Helena Central Valley and East Helena area, sponsored HB 150. In the past, when a youth goes before the judge, they are sent to the Department of Family Services and the judge has no control over the youth, and has no further information about him. This bill would give the judge more control, she said. The bill would require that a collective group, including community professionals to form a

Vote: The **MOTION FAILED** on a roll call vote of 4-4. The vote was held open for absent members.

Discussion: **SENATOR HALLIGAN** stated there was no problem with the agency amendment on Page 7, Line 1, to say, after "the judge," "resources are available for the youth at that residence." After the word, "for," insert, "placement of."

Motion/Vote: **SENATOR HALLIGAN MOVED THE AMENDMENT.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Motion/Vote: **THE VOTE HELD OPEN ON SENATOR BARTLETT'S MOTION TO AMEND HB 380 ON PAGE 6, LINE 22 CARRIED** on a roll call vote, with the addition of **SENATOR LORENTS GROSFIELD'S** "yes" vote.

Vote: **ON THE ORIGINAL MOTION OF SENATOR HALLIGAN THAT HB 380 BE CONCURRED IN AS AMENDED, THE MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 150

Discussion: **CHAIRMAN CRIPPEN** explained an amendment, on Page 3, Line 4, following the word, "department," insert, "and to the youth court judge."

Motion: **SENATOR ESTRADA MOVED THE AMENDMENT.**

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Motion: **SENATOR ESTRADA MOVED THAT HB 150 BE CONCURRED IN AS AMENDED.**

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 551

Discussion: **Valencia Lane** explained that the conflict between HB 429 and HB 551, saying they both would amend 41-5-604. She said HB 551 puts in references to DNA records. **REPRESENTATIVE MOLNAR** said that both bills blend and neither is harmed. HB 429 on Page 1, Line 20, insert, "except as provided in Section 5." On the same bill, Page 3, Line 30, put, "fingerprints and photographs," back in and after that, insert, "DNA records." On bill HB 551, Page 4, Line 29, after, "do not apply to," insert, "fingerprints and photographs." Or, to, "records", strike the rest of the sentence and put in, "in any case in which the youth did not fulfill all requirements of the court's judgement." **Valencia Lane** said she could see the substantive changes of the two bills, but only minor conflicts, for example, in HB 551, Page 4, Line 18, should read, "covered by." In the other bill they struck, "coming," but left, "under this." She said it could not be codified in this chapter. She asked to prepare an amendment for

one bill or the other to make the changes. **REPRESENTATIVE MOLNAR** suggested they do HB 429. **Valencia Lane** said she would amend HB 429 to address 41-5-604 to make sure that all non-substantive changes in these bills are identical so there are no conflicts.

Motion/Vote: **SENATOR HALLIGAN MOVED THAT HB 551 BE CONCURRED IN AS AMENDED.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

{Tape: 2; Side: B; Approx. Counter: 00}

EXECUTIVE ACTION ON HB 311

Motion: **SENATOR BAER MOVED THAT HB 311 BE CONCURRED IN.**

Discussion: **SENATOR DOHERTY** explained his amendments, as shown in **(EXHIBIT 5)**. In amendment # 1, Page 1, Lines 12 and 13, the language, "might result in depriving a property owner of all or part of the use of economic value of private property." was taken out and inserted, "a taking." He said it would try to clean up the language and make it consistent throughout. The second amendment would strike Line 29 and 30 of Page 2, then inserting, "whether the proposed action would constitute a taking of private property in violation of the United States or the Montana Constitutions; and". He said this was one thing the Attorney General should think about. **REPRESENTATIVE GRINDE** asked to have **Hertha Lund** represent the bill's sponsors for the purpose of explanation. **Ms. Lund** said they had worked with the Attorney General's office with the subject of this first amendment. She stated that the present form tracks the case law. The amendment would change the bill substantively and take it further from the case law which had found takings where it did not involve all of the economic value. On the second proposal, she said that 1 through 6 of the bill was set up in a decision "tree" (in the statement of intent) that she and Dean Huffman of Lewis and Clark County wrote. It clarifies the current status of takings law so that at each step the analysis could be stopped and make it an easier process. On Page 4, Section 5, the six things are what the bill flows under, she said. Then the following six steps are used in the procedure. **SENATOR HALLIGAN** said he recalled from the hearing that **Beth Baker** did not feel that it was an accurate summary of existing federal or state takings law, and that the Subsection was not an accurate summary. **Ms. Lund** said it was **Katherine Orr** that had mentioned that it was an approximation. **Ms. Lund** stated that the Attorney General's office had signed off on this bill. She said the question was whether or not the action would deprive the owner of economic and viable use of the property. That language is directly out of Lucas vs. Penn Central. The current debate is in the interpretation whether or not there is a partial takings, but nobody would argue that the language is not in those cases. **SENATOR DOHERTY** agreed with the origin of the language, but said if the intent of the bill was

SENATE STANDING COMMITTEE REPORT

March 13, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 551 (third reading copy -- blue), respectfully report that HB 551 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

581246SC.SRF